

10/622,419

Remarks/arguments:

Initially, independent claim 19 has been cancelled, and new claim 20 is submitted. Claim 20 has been drafted to include all the structural limitations set forth in withdrawn claim 18. It is now submitted, that in view of this new claim the examiners restriction requirement is no longer appropriate. Thus, the apparatus as claimed can not be used to practice another and materially different process. Accordingly, the withdrawal of the restriction requirement is respectfully requested.

By the present amendment independent claims 1 and 4 have been amended to more clearly set forth applicants invention. In addition, dependant claim 8 has been amended to improve its form. Dependant claim 17 has also been amended to use a term consistent with the claim from which it depends. It is respectfully submitted that all claims are now allowable for the following reasons.

The examiner in his initial rejection of independent claims 1 and 4, and dependant claims 2 and 7 (and also 19 which has been cancelled by the present amendment) took the position that they were anticipated by Christy et al (5,786,587) under 35 U.S.C. §102, or alternatively that they were unpatentable over Christy under 35 U.S.C. §103(a). By the present amendment the independent claims have been amended to more clearly set forth applicants invention. Thus, for example, claim 1 recites:

"A polymerization temperature test element for a polymerization device in the field of dental restoration, the device having an energy source for irradiating a dental restoration product; the test element comprising:

a base element (20) having a central region (12) to be filled with a dental restoration product to be polymerized by irradiation; and temperature indicating means carried by the base element and spaced away from the central region a distance sufficiently great so that the temperature indicating means cannot be in contact with the dental restoration product to be polymerized, the temperature indicating means indicating when a target polymerization temperature has been reached during irradiation."

When we analyze the above claim we find virtually nothing in Christy which is similar to the apparatus now set forth in the claim. Thus Christy does not disclose a polymerization test element. What Christy discloses is a microwave-heatable therapeutic exercise putty mass which is packaged in a microwavable container having a transparent bottom wall which is provided with a thermochromic heat sensitive material in intimate heat transfer contact with the putty mass. Christy does not disclose a base element having a central region adapted to be filled with a dental restoration product, which product is to be polymerized by irradiation. Christy does not disclose temperature indicating means carried by the base element and spaced away from the central region a distance sufficiently great so that the temperature indicating means cannot be in contact with the dental restoration product to be polymerized, the temperature indicating means indicating when a target polymerization temperature has been reached during irradiation. It is essential that the temperature indicating means be spaced away from the material being polymerized to avoid any measurement fault caused by

an exothermic reaction of the dental restoration product during polymerization. As the subject matter of independent claims 1 and 4, as well as dependant claims 2 and 7, is clearly not anticipated by Christy, the withdrawal of the §102 rejection is respectfully requested.

The examiner in his rejection of claims 3, 5, 8, and 8-17 as unpatentable over Christy et al in view of Faries (6,467,953) relied upon 35 U.S.C. §103(a) which states:

"A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made."

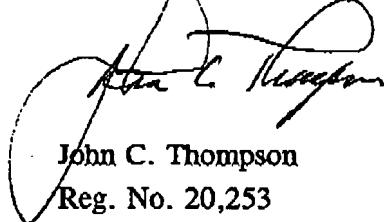
The examiner has relied upon Faries for a teaching of a temperature indicator which changes color, and states that it would not have amounted to invention to substitute the color changing temperature indicator of Faries for the temperature indicator of Christy. It should be noted that the examiner should not rely on non-analogous art, or alternatively, "**TO RELY ON A REFERENCE UNDER 35 U.S.C. 103, IT MUST BE ANALOGOUS PRIOR ART**" (MPEP §2141.01(a) I. It is respectfully submitted that the Faries reference comes from an non-analogous art, and therefore should not be combined with Christy et al. In any event, even if it were combined, the combination of the two references would not teach the subject matter now set forth in the claims, as Christy does not teach the subject matter of

independent claims 1 and 4 as amended. Accordingly, the withdrawal of this grounds of rejection is respectfully requested.

New claim 20 also teaches subject matter not found in the references. Thus, new claim 20 recites a polymerization temperature test element having a base element with a centrally located receipt region for receiving a dental restoration product and peripheral temperature indicating means supported by the base element. Clearly Christy does not disclose a centrally located region for receiving product and a peripheral temperature indicating means. Faries does not overcome this defect. Accordingly, claim 20 should also be allowed over the prior art.

In that all claims are deemed allowable for the reasons set forth above, the allowance of this application is respectfully requested.

Respectfully submitted,



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